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April 26, 2000

**VIA COURIER**

Magalie Roman Salas  
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-65

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's April 6, 2000 Public Notice Requesting Comments are an original, six paper copies, and a diskette copy of the Comments of RCN Telecom Services, Inc.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,



Harisha J. Bastiampillai

Enclosures

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**ORIGINAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	CC Docket No. 00-65
Southwestern Bell Communications Services,	)	
Inc. d/b/a/ Southwestern Bell Long Distance	)	
for Provision of In-Region, InterLATA	)	
Services in Texas	)	

**COMMENTS OF  
RCN TELECOM SERVICES, INC.**

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## SUMMARY

The first round of comments and reply comments in this proceeding demonstrated that the application of SBC Communications, Inc. ("SBC") did not provide a sufficient basis for the Federal Communications Commission to grant authorization for SBC to provide in-region, interLATA service in the State of Texas. SBC has supplemented its application by providing new data regarding, *inter alia*, its performance in regard to coordinated conversions of active customers from SBC to competing carriers. This new submission does not provide any indication that SBC is adequately meeting the benchmarks in regard to "hot cuts" set by the Public Utility Commission of Texas and the standards as articulated by the Federal Communications Commission. Furthermore, the data provides troubling implications as to the effect of SBC's "hot cut" performance on the ability of CLECs to compete in the State of Texas. Granting the application of SBC would unduly lower the performance standards required under Section 271 analysis and would not serve the public interest.

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for Provision of In-Region, InterLATA	)	
Services in Texas	)	

**COMMENTS OF RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. ("RCN"), by undersigned counsel and pursuant to the Commission's *Public Notice* (dated April 26, 2000), submits these comments concerning the above-captioned application ("Application") of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (collectively "SBC") as supplemented by additional information by SBC on April 5, 2000. For the reasons, stated below the Commission should deny SBC's application to offer interLATA service in Texas.

**INTRODUCTION AND SUMMARY**

The near consensus opinion, save for the position of the Public Utility Commission of Texas, in the initial round of comments and reply comments on SBC's Application to provide in-region interLATA service in the State of Texas was that the application was fatally deficient, or at the very least, premature given the state of local competition in the State of Texas. SBC attempts to assuage these concerns by supplementing its application to address the "handful of issues" that remain in genuine dispute.<sup>1</sup> Leaving for the moment the issue of how big a handful

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<sup>1</sup> SBC April 5, 2000 *Ex Parte Submission* at p. 1.

is, the outstanding issues of concern in regard to the SBC Application are issues central to the decision of this Commission of whether or not to approve the application. These Comments will address the issue of hot cuts, one that is vital to the promotion of real and immediate competition in the state of Texas. This is an area in which RCN has experienced significant difficulties with Bell Atlantic in New York and other BOCs. RCN is very concerned that the Commission establish thorough and concrete hot cut standards in this proceeding so that RCN and other CLECs can be assured adequate hot cut performance as BOCs seek Section 271 approval in other states. These Comments will also consider the public interest implications of the issues raised in this proceeding and show how the granting of the SBC application is not in the public interest.

Without revisiting the merits of whether it was appropriate to grant Bell Atlantic's application, SBC's application provides less of a basis for approval under Section 271. The first round of comments and reply comments exposed numerous deficiencies in the SBC application particularly in regard to hot cuts.<sup>2</sup> Only with its April 5 submission does SBC proffer data sufficient to even begin considering these checklist items, but the data does not support its contention that it is meeting the evidentiary burden and standards set by the *Bell Atlantic New York Order*. In addition, given the less than perfect nature of data submitted by SBC in this proceeding to this date, the data warrants even higher scrutiny.

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<sup>2</sup> See generally Evaluation of the United States Department of Justice; Comments of Allegiance Telecom, Inc.

The Commission must give careful consideration to SBC's performance in the areas of hot cuts, because as the Commission itself recognizes, these issues are crucial to the promotion of viable competition and advanced services. SBC's dilatory data submissions do not evidence compliance with the checklist items and is an attempt to bootstrap the findings that led this Commission to grant Bell Atlantic's application. As RCN shows *infra*, granting SBC's application would lower the Section 271 bar to the detriment of the promotion of local competition.

**I. SBC IS NOT IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST IN REGARD TO HOT CUTS**

The Telecommunications Act of 1996<sup>3</sup> conditions the ability of Bell Operating Companies ("BOC") to provide in-region, interLATA service on compliance with certain provisions of section 271 of the Act.<sup>4</sup> To obtain authorization to provide in-region, interLATA services under section 271, the BOC must show, *inter alia*, that it has "fully implemented the competitive checklist" in subsection (c)(2)(B).<sup>5</sup> Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that SBC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."<sup>6</sup> In order to

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<sup>3</sup> The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>4</sup> 47 U.S.C. § 271.

<sup>5</sup> 47 U.S.C. § 271(d)(3)(A); *Bell Atlantic New York Order* ¶¶ 18, 44.

<sup>6</sup> 47 U.S.C. § 271(c)(2)(B)(iv).

establish that it is providing unbundled local loops in compliance with section 271(c)(2)(B)(iv), SBC must demonstrate that it had a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors reasonably demand and at an acceptable level of quality.<sup>7</sup>

A vital facet of a BOC's provisioning of unbundled loops is through "the use of coordinated conversions of active customers" from the BOC to the competing carriers.<sup>8</sup> This process is known as a "hot cut" and entails manually disconnecting the customer's loop in the BOC's central office and reconnecting the loop at the competing carrier's collocation space.<sup>9</sup> The customer is taken out of service while the hot cut is in progress, thus, the "hot" in the cut.<sup>10</sup> It is critical that the hot cut is provisioned correctly with coordination between the BOC and the competing carrier because problems with the cutover could result in extended service disruptions for the customer.<sup>11</sup> For a competing carrier trying to convince a customer that its change from the incumbent to the competitor was the correct choice, it goes without saying that the shorter the service disruption the better.

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<sup>7</sup> *Bell Atlantic New York Order*, ¶ 269.

<sup>8</sup> *Bell Atlantic New York Order*, ¶ 291.

<sup>9</sup> *Bell Atlantic New York Order*, ¶ 291, fn. 925.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



SBC recognizes the importance of close coordination, but attempts to discount the importance of “hot cuts” by stating that only 10 to 15 percent of unbundled loops are provisioned using the hot cut process.<sup>12</sup> The Commission, however, has not heretofore eased performance standards based on the fraction of loops that are provisioned through the hot cut process, and now is surely not the time to read in such a standard. Given the “hot” nature of the transfer of the loop, it is all the more vital that the BOC be held to a rigid, exacting standard in this area.

The Commission recognized the central importance of hot cuts when it noted in its Bell Atlantic Order that:

[f]inally, we emphasize that although we consider Bell Atlantic’s demonstrated on-time hot cut performance at rates at or above 90 percent, in combination with the evidence indicating that fewer than five percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles, to be sufficient to establish compliance with the competitive checklist, we view this as a minimally acceptably showing. We would thus have serious concerns if the level of performance in any of these three measures were to decline and would be prepared, in that event, to take whatever enforcement action is warranted. We are especially concerned with hot cut performance because of the substantial risk that an untimely or defective cutover will result in an end-user customer’s loss of service for more than a brief period, as well as the effect of such disruptions upon competitors. We also would be particularly concerned if there was any evidence that Bell Atlantic is competing in the market place in part by suggesting to consumers that there is a possibility of service disruptions when customers switch their service from Bell Atlantic to competing carriers.<sup>13</sup>

Perhaps SBC is attempting to minimize the importance of “hot cuts” due to the inadequate nature of its performance in this area. As the Department of Justice concluded,

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<sup>12</sup> SBC April 5, 2000 *Ex Parte Submission*, p. 8-9.

<sup>13</sup> *Bell Atlantic New York Order*, ¶ 309.

“SBC’s performance with regard to “hot cuts” is worse than Bell Atlantic’s performance in New York, which the Commission concluded was ‘minimally acceptable.’”<sup>14</sup> SBC did not even initially provide data for its frame due time (“FDT”) changes.<sup>15</sup> SBC attempts to rectify the initial inadequacies of its data by submitting new data on CHCs and data on FDTs.<sup>16</sup>

The data shows deficient performance in both CHCs and FDTs. More troubling is the fact that the data shows performance that appears to be worsening over time. For example, the premature disconnect for LNP conversions (with Loop) show that three of the four pertinent measures for January and February 2000 exceed the two percent benchmark allowed by the Texas PUC.<sup>17</sup> SBC’s performance actually worsened over time as reflected by the fact that in February, 11.2 percent of CHCs were performed prematurely, compared to 0.5 percent in December.<sup>18</sup>

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<sup>14</sup> United States Department of Justice Evaluation, p. 27.

<sup>15</sup> *Id.* at 29. SBC uses two hot cut processes. One is fully coordinated hot cut (“CHC”) process which is to be used for conversions of orders of twenty or more lines. These orders are manually processed and require intensive coordination and communication between SBC and the CLEC. Thus, they are performed outside of normal business hours. FDT cuts are used for cuts of fewer than 20 lines and are performed during normal business hours since they can be processed without the manual intervention of SBC representatives. *Id.* at 27.

<sup>16</sup> See April 5, 2000 SBC *Ex Parte Submission*, pp. 9-11.

<sup>17</sup> Supplemental Joint Affidavit of Candy R. Conway and William R. Dysart (“Conway/Dysart Supplemental Affidavit”), p. 5.

<sup>18</sup> *Id.*

In regard to FDT cut-overs, SBC asserts that it meets the two hour benchmark 93 percent of the time. For instance, in January 2000, the two hour completion interval was met 95.3 percent of the time, and for February 2000, the two hour interval was met 92.1 percent of the time.<sup>19</sup> The problem, however, is that SBC is required to complete the cutover within two hours 99 percent of the time.<sup>20</sup> Thus, SBC is not close to meeting the benchmark requirements.

In one instance, SBC does candidly admit a “significant departure from the standard set in New York.”<sup>21</sup> The departure is in the area of unexpected SWBT-caused outages for the FDT method. SBC shrugs off this “departure” by noting that “[c]ritically, however, any CLEC that is concerned about possible outages on a particular hot cut need only select the CHC method.”<sup>22</sup> The Commission, however, has unequivocally held, as shown *supra*, that the standards it set in the New York Order is a “minimally acceptable showing” and that it “would have serious concerns if the level of performance in any of the three measures were to decline” particularly given the importance of hot cuts.<sup>23</sup>

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<sup>19</sup> *Id.* at p. 7.

<sup>20</sup> *Id.*

<sup>21</sup> SBC April 5, 2000 *Ex Parte Submission*, p. 10.

<sup>22</sup> *Id.*

<sup>23</sup> *Bell Atlantic New York Order*, ¶ 309.

There are two reasons why SBC's woeful performance on FDTs is troubling. One, SBC trumpets its choice of hot cuts processes as an added "benefit" that Bell Atlantic did not offer,<sup>24</sup> and one that allows the CLEC to pick the process that "best fits their resources and priorities."<sup>25</sup> The problematic FDT data suggest, however, that it is not much of a choice, and that CHCs in the SBC regime provides a better chance to avert disaster. The troubling aspect of this Hobson's choice is that, per the Department of Justice, SBC:

has encouraged, if not required, CLECs to switch from CHC to FDT for smaller volume loop cuts. SBC has expressed the view that CHC is too resource-intensive to support commercial levels of demand for these lower-loop volume orders and that transition to FDT could alleviate CHC capacity constraints. SBC may charge a premium if CLECs select the intensively manual CHC process. In light of this the use of CHC appears to be rapidly declining, while the use of FDT appears to be rapidly increasing.

Thus, the CLEC troubled by the heightened potential for transition problems with the FDT process may have to pay a premium for CHCs to be entitled to what it should be entitled to under the Act, i.e., a relatively seamless loop transfer. The payment of the premium for CHC service, however, would still not be a guarantee that SBC would meet the minimally acceptable standards.

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<sup>24</sup> SBC April 5, 2000 *Ex Parte Submission*, p. 10, n. 11.

<sup>25</sup> *Id.* at 9.

In addition, there are still lingering doubts as to the veracity of the SBC performance data.<sup>26</sup> It is clear from the SBC affidavits that there is still some uncertainty even on the part of SBC as to the proper data to use.<sup>27</sup> The data is being currently reconciled, but until a thorough and mutually acceptable reconciliation is done, the doubts as to the data will remain. Thus, the situation is in stark contrast to that of Bell Atlantic. While there were similar CLEC doubts as to the veracity of Bell Atlantic data, the New York Commission had conducted a thorough reconciliation of the data at the time the FCC rendered its decision.<sup>28</sup> Moreover, this reconciliation was corroborated by the findings of a third party, KPMG. There is no such corroboration in this application. The Commission acceded a great deal to probative value to Bell Atlantic data based on this external corroboration. The Commission noted, however, that:

[w]e underscore, however, that the weight we accord to conflicting pieces of evidence here flows directly from our assessment of the probative value of each of those pieces of evidence. As such, we note that we could arrive at a different weighting if presented with another set of facts and circumstances.<sup>29</sup>

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<sup>26</sup> See SBC April 5, 2000 *Ex Parte Submission*, p. 9; AT&T March 13, 2000 *Ex Parte Submission*.

<sup>27</sup> Conway/Dysart Supplemental Affidavit ¶ 41.

<sup>28</sup> The Commission stated it was “persuaded by and give significant weight to the New York Commission staff’s exhaustive review of Bell Atlantic’s hot cut performance.” *Bell Atlantic New York Order*, ¶ 295.

<sup>29</sup> *Bell Atlantic New York Order*, ¶ 296.

SBC's data does not have such corroboration. SBC is still in the process of reconciling data with the Texas Public Utility Commission and various CLECs.<sup>30</sup> The third party data in this proceeding does not match that of the New York proceeding. As the Department of Justice noted:

[t]he third party test that was part of the record in Bell Atlantic's New York application was broad, independent and robust and played a valuable role in opening that market to competition. In comparison, the Telcordia test in Texas was far less comprehensive, blind and independent, and therefore provides much less persuasive evidence.<sup>31</sup>

Thus, the factors that led the Commission to find that Bell Atlantic's hot cut performance met the minimally acceptable standards are not present here. The performance data shows that SBC is below the benchmark in vital categories in regard to both CHCs and FDTs. This coupled with the already questionable accuracy of the data leads to the inescapable conclusion that SBC has failed to meet its burden of compliance in regard to "hot cuts" and this provides an independent basis for denial of its application.

The issue of hot cuts is quite illuminating as to effects that SBC's inadequate performance will have in both the development of local competition and the preservation of long distance competition. Deficiencies in hot cut performance will impose costs on the CLEC, try the end user's patience and provide competitive benefits to the BOC. According to a survey conducted by the Competition Policy Institute, the "[s]trongest impediment to switching [LECs]

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<sup>30</sup> Coward/Dysart Supplemental Affidavit, ¶ 35.

<sup>31</sup> United States Department of Justice Evaluation, p. 7.

comes from concern about service interruptions during the change over.”<sup>32</sup> Thus, BOCs have a perverse disincentive to provide lower quality service in regard to hot cuts, at least up to the boundaries that the Commission’s “minimally acceptable standards” will provide. One of the key issues in the appeal by AT&T Corp. and Covad Communications of the *Bell Atlantic New York Order* is that the Commission set the bar too low in regard to hot cut performance by failing to focus the performance standards on what is technically and commercially feasible for the BOC.<sup>33</sup> If the Commission grants sanction to SBC’s hot cut performance figures by approving its application, it will further lower the performance bar. It does not take many botched orders to tarnish the reputation of a competitor. The end user will not care whose fault it is, but will instead think that sticking with the incumbent would provide the least disruption. Thus, all the marketing and production development efforts of the CLEC will be held hostage to the BOC’s performance of the hot cut.

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<sup>32</sup> Evaluation of the United States Department of Justice, *In re: Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295 (November 1, 1999), p. 18, n. 39.

<sup>33</sup> See Brief for Appellants AT&T Corp. and Covad Communications Company at pp. 43 to 49, *AT&T Corp., et al., v. Federal Communications Commission* (No. 99-1538)(D.C. Cir)(Appellants argue that substantially better performance standards were “technically feasible” in comparison to those the FCC found minimally acceptable).

## **II. GRANTING SBC SECTION 271 AUTHORIZATION WOULD NOT BE IN THE PUBLIC INTEREST**

In addition to determining if SBC's application satisfies the competitive checklist and will comply with section 272, the Commission must assess whether the requested authorization would be consistent with the public interest, convenience and necessity.<sup>34</sup> This is not a case of an application being arguably close to Section 271 approval. Commenters in this proceeding have exposed serious deficiencies in SBC's application. What is troubling is that these deficiencies occur in areas crucial to the development of local competition and the maintenance of thriving long distance competition. Section 271 serves a two-fold purpose in that it is designed to ensure that local competition is promoted as a pre-requisite to granting a BOC Section 271 authority and that long distance competition will be protected after the BOC starts to provide interLATA service. Both facets of the underlying goal of Section 271 are imperiled if SBC's application is granted.

RCN has focused these comments on hot cut issues. RCN is confident that other comments will address other inadequacies in SBC's application that could disqualify it at this time from interLATA approval in Texas. These include failure to provide nondiscriminatory access to xDSL capable loops, nondiscriminatory access to OSS, and the anticompetitive impact of Project Pronto.

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<sup>34</sup> *Bell Atlantic New York Order*, ¶ 422

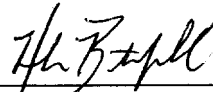


When these performance deficiencies are considered in context with the history of the local exchange market in the State of Texas, one comes to the inescapable conclusion that there are still barriers to entry in the local market, and that BOCs can leverage these barriers and the underlying bottleneck to maintain its competitive advantage. The overarching goal of the Act of promoting the development of competitive local telecommunications markets and the resulting consumer benefits of greater choice and reduced prices would not be served by grant of the present application.

### **CONCLUSION**

The SBC application is a step backwards from the Bell Atlantic New York application. If the Commission grants this application it would be lowering the bar in vital areas of local competition and imperiling both local and long distance competition in the state of Texas. For the foregoing reasons, the Commission should deny the SBC Application.

Respectfully submitted,



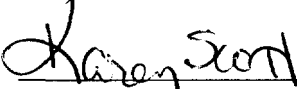
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Dated: April 26, 2000

Counsel for RCN Telecom Services, Inc.

**CERTIFICATE OF SERVICE**

I, Karen Scott, hereby certify that on April 26, 2000, I caused to be served upon the following individuals the Comments of RCN Telecom Services, Inc. in CC Docket 00-65:

  
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